

HARRIET DE LA PALM BAKER—CHILDREN OF.

[To accompany Bill H. R. No. 360.]

MARCH 19, 1860.

Mr. FENTON, from the Committee on Revolutionary Claims, submitted the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of the heirs and representatives of Colonel Frederick Henry de Weissenfels, of the army of the revolution, report:

The memorialists, as the children of Mrs. Harriet de la Palm Baker, who was the daughter and heir of Colonel Frederick Weissenfels, of the revolutionary army, claim of the United States a quantity of land, or the value thereof, to which Colonel Weissenfels was entitled under an order in the council and a royal proclamation in 1763.

It appears that Colonel Weissenfels, the grandfather of the petitioners, was one of the reduced officers who had served in North America during the war of 1756, with France; and after the peace of 1763 resided in New York.

While lieutenant in the royal North American army Weissenfels participated in the attack on Ticonderoga, and also in the descent upon and capture of Havana, in 1762. "He ascended the Heights of Abraham with brave Wolfe, and saw him expire in the arms of victory." He served in the same regiment with St. Clair. After peace was established, and that army was reduced, he settled in the colony of New York as a private citizen.

As a reward for meritorious services, and some compensation for the loss of pay and emoluments that followed their reduction, these reduced officers and soldiers were entitled to receive under a royal grant and proclamation of the 7th October, 1763, considerable quantities of land, in proportion to their rank. The quantity to which a lieutenant was entitled was two thousand acres.—(See American Archives, 4th series, vol. 1, page 173.)

This claim was brought before the House of Representatives by Mrs. Baker, the mother of the present petitioners, at the second session of the 27th Congress, and was reported on by the Committee on Revolutionary Claims.—(Report No. 1,072.)

That committee did not recommend the payment of the claim, "because," in the language of the report, "there was no evidence before the committee of his residence from the date of the proclamation until he entered the service of the United Colonies in 1776. Neither is it certain but that he may have received his quantity of land from some one of the colonies." That committee was also under an impression that Colonel Weissenfels had never himself made application for the land. Documentary and historical evidence has been adduced, which, in the opinion of this committee, removes those objections. A brief statement of the facts will show.

In the 2d volume, 4th series, American Archives, page 917, and among the proceedings of the colony of New York, a letter appears, dated June, 1775, addressed to the American Congress, signed by Frederick H. Weissenfels, and others, offering their services to go to Canada to repel General Carleton, who had been ordered by the British government to New York, with a military force, to "punish the rebels." It also appears that they did go, and that Weissenfels was brigade major, with Montgomery and Wooster.

In volume 5, 4th series, American Archives, page 331, is a copy of a paper designated a "List of the four regiments raised in New York, 1775, now in Canada, as they rank to-day; New York, February, 1776." In which list, among the names of the captains, is that of "F. Weissenfels." From these, it appears, the New York line was formed.

It is not reasonable to suppose that persons not residents of New York would have been appointed to command those regiments, and from this there can be no reasonable doubt that New York was the place of residence of Weissenfels at the time when and before he entered the service of the United Colonies; and the presumption is that it was his place of residence during the period from 1763 to 1775. Family tradition, stated under the oath of Mrs. Baker, is conclusive on this point. That he had all the requisites for obtaining the portion of land allotted to a subaltern or staff officer, by the royal grant of 1763, referred to above, the certificate of General St. Clair, and the American Archives, the committee think, clearly testify.

It is quite certain that he never received the land to which he was entitled from New York, his name not appearing in the list of the names of those who received grants from that colony under the royal proclamation, (see American Archives, volume 2, 4th series, page 135, and letter from the secretary of State of New York, of the 27th May, 1856, filed with the papers;) and not a trace of evidence appears of his having received it from any other colony. Indeed, the circumstances forbid the supposition that he would have applied for it out of New York.

The want of positive proof of a personal application for the land should be no bar to the claim, in consideration of the circumstances, and of the fact that the time for making the application was not limited; but that he did make personal application, together with others, but failed to obtain it in consequence of adverse claims under grants from the governor and council of New York, to the tract that

had been set apart for their use, is to be inferred, without a doubt, from the circumstances.

In consequence of this difficulty, application was made to "the lords of committee of council for plantation affairs," by petition dated the 26th of August, 1773, "by Lieutenant Colonel Stewart and seven others, in behalf of themselves and several other officers who served in America during the late war, setting forth their services and the expenses they have incurred in prosecuting his Majesty's right to certain lands claimed by John Van Rensselaer, esq., in New York, and praying for a grant of a tract containing 250,000 acres of the said lands," for the purpose of fulfilling the provisions of the royal proclamation of the 7th October, 1763, in their behalf. Action on this petition was postponed from time to time till February, 1775, when, at a meeting of the council, early in that month, it was considered. The applicants were all residents of New York, and it is not to be doubted that, although not designated by name, Weissenfels was one of them. All this is set forth in the American Archives, vol. 2, 4th series, pp. 134, 135, 136. This statement goes on to say of the proceedings above referred to:

"Colonel McLean having stated that the governor and council of New York had, in direct disobedience to an order in council, made in behalf of the reduced officers, confirmed to Mr. Van Rensselaer, by patent, lands which they claimed, and had not taken any notice of a caveat entered by them against such confirmation," &c. ; and again: "At a meeting of his Majesty's commissioners for trade and plantations, Monday, February 29, 1775—present, Mr. Jenins, Mr. Joliffe, Mr. Gascoyne, Mr. Keen—

"The Earl of Dartmouth took into further consideration the business of New York, mentioned in the two preceding days' minutes, and the parties interested in the lands in question attending again. Mr. Dagge, solicitor for the reduced officers, submitted to the board the following proposal for adjusting the matter in controversy, so far as it regarded the claims of said officers and those of the present possessors and occupants, viz: 'That the petitioners be allowed to locate their lands claimed under the proclamation upon that tract within the province of New York which lies between the north and south manors of Rensselaer, bounded on the west by the Kinderhook patent, and on the east by the jurisdiction line between the provinces of New York and Massachusetts, as far as such locations can be made without prejudice to the present occupancies now under actual improvement.'

* * * 'And that in so far as the vacant lands shall fall short of the quantity claimed by the petitioners, they be allowed to locate double the quantity of such residue in some other part of the province of New York, or elsewhere in North America, not already granted.'
* * * 'Mr. Savage, on the part of the occupants, signified his consent to and approbation of the said proposal, in which the board acquiesced.'"

In a few weeks after this arrangement was concluded, hostilities commenced between Great Britain and the colonies; and Weissenfels, engaging immediately (in the month of June) and with great ardor on the side of the colonies, seems, from that time, to have scarcely

bestowed a thought on his private affairs. Returning from Canada he received from Congress, in 1776, a commission of lieutenant colonel in the second New York regiment, in which he continued till near the close of the war, when the forces were reduced. Generals Van Cortlandt and Colfax, in private letters now in the possession of the petitioners, speak of him as a brave, judicious, and highly meritorious officer, enjoying the confidence of the commander-in-chief in a very high degree, and as having participated in most of the hardest fought battles during the revolution. He commanded the regiment at the battle of White Plains, by order of the commander-in-chief, (the colonel having proved recreant,) and again at Monmouth, in the absence of the colonel, where he forced the British "invincibles" to retire, at the point of the bayonet, from their ground. He was with Gates at Saratoga; with Sullivan in a campaign against the Indians; with Washington at Trenton, Princeton, &c.; and on all occasions acquitted himself with honor.

But to return to the land. Without controversy, Colonel Weissenfels was entitled to two thousand acres of land under the royal proclamation of 7th October, 1763; and, as one of the petitioners referred to in the arrangement cited above, he was authorized to locate it between the Rensselaer manors and Massachusetts, or double the quantity elsewhere, if sufficient should not be found vacant in that valuable tract. The committee, in its report No. 1,072, 2d session 27th Congress, seems to have been satisfied of the liability of the United States if the claim still fairly existed. "The United States," it says, "having succeeded the colonies and provinces mentioned in the proclamation, with the exception of the new colonies of Quebec, East Florida, West Florida, and Granada, may be considered as bound to assume the liabilities of those colonies, so far, at least, as regards all just claims for unappropriated lands, from the fact that all the lands within the territory of the United States, and not within the lines of any one of the particular States, were ceded to the Union for the benefit of all the States. In this view of the case, Colonel Weissenfels, or his heir, may have an equitable claim upon the government for the performance of that part of the proclamation above recited."

The chain of evidence seems to be complete; showing that Colonel Weissenfels was one of the reduced officers who served in the British North American army during the war of 1756 with France, and, after the peace of 1763, actually resided in New York; that, with others, he personally applied for the land, but was prevented from obtaining it prior to the revolution by a succession of adverse circumstances, over which he had no control. He had then a valid claim to two thousand acres of land under the royal proclamation of 1763. That he ever received it there is not the slightest evidence or probability; and principles of an exalted patriotism seem to have been the sole cause of his never having applied for it after he entered the service of the united colonies.

But the question occurs: Are the United States under any obligation to fulfil this engagement of the king of Great Britain? None will deny that the government of the United States is an original sovereignty. It did not succeed to, nor was it a modification of, any

other single power ; nor did it derive its powers or its property *directly* from the British crown. It was the offspring of the will of the people of various independent States, and was by them severally endowed with their unappropriated lands in trust for the common use and benefit. Hence some have contended that the United States are not bound to fulfil any obligations of the British crown.

But this is a partial and one-sided view only of the subject. It can be said, with equal truth, that, although the government of the United States was a constituted sovereignty of the people of the several States, the several governments of those States held *their* powers and *their* lands by actual and legitimate succession. It never has been disputed, it will never be denied, that *they* derived *their* lands from the British crown. And it is a principle of national law that the obligations of a government are not annulled by a change of dynasty. And the committee believed it would outrage the principles of justice and honor of any of those States to suppose it intended, in its act of cession to the United States, to shield itself from the fulfilment of an obligation like this to one of its own citizens, and especially such a citizen as Colonel Weissenfels. The claim upon the land in a case like this should follow the land. The land having been transferred to the United States, and the State which transferred it having by that act deprived itself of the power to make the grant, every principle of equity and honor seems to require it at the hands of the United States. There certainly is no prohibition of this.

It is true that Col. Weissenfels would not have saved the land in question had he continued a loyal officer of the King ; but it scarcely admits a doubt that he would have been handsomely rewarded, besides being fully indemnified for the loss of the land which would in such case have been forfeited.

The committee believe that the heirs and legal representatives of Col. Weissenfels have a just claim to this land upon the United States, and that the granting of it would be in accordance with the dictates of a sound policy and national justice. His having thought so little of self as not to have demanded it should be regarded as a virtue rather than a fault. And it would seem to be the part of a great and magnanimous people—rich and powerful through the services of such men—not to let the noble and generous motives which induced such hazards and such sacrifices, as well as the neglect of their own rights, to operate to the disadvantage of their children. Perhaps if there is one consideration more powerful than all others in reconciling the patriot to the sacrifice of life and fortune for his country, it is the faith he cherishes that when he is gone his country will be a father to his children. But with what harrowed feelings would he, after having endured years of toil and danger, pour out his life upon the battlefield, though in the arms of victory, and it were the crowning achievement to which he had ardently aspired, should a vision of the future open to his view in that last hour, and he should behold his country luxuriant in wealth and grandeur, and his children, dearer than his life, contending with poverty and despair, and their petition to that country for a just relief rejected or treated with cold neglect.

It would seem to comport with a judicious national policy for the

general government to avail itself of all suitable means of inculcating sentiments of patriotism and a spirit of devotion to the cause of liberty; and they believe there is no mode more effectual to this end than extending a liberal hand, on all proper occasions, to the descendants of those whose labors and lives and fortunes secured our national freedom and independence.

In conclusion, the committee think that a measure of relief should be extended to the heirs and legal representatives of Col. Weissenfels, and therefore report the accompanying bill.

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CAPT. SAMUEL JONES—LEGAT REPRESENTATIVE OF

March 12, 1862

Mr. Fenton, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of the late representative of Captain Samuel Jones, a revolutionary soldier, report:

That this claim was favorably reported on the 15th day of March, 1862. That report, with the evidence has been re-examined; and your committee, concurring entirely with that report, which it and report a bill in all respects the same as the one then reported.

Is now House of Representatives, March 5, 1862.

Mr. Jackson, from the Committee on Revolutionary Claims, made the following report:

The Committee on Revolutionary Claims, to whom was referred the petition of Samuel Jones, the late representative of Samuel Jones, a revolutionary soldier, were, according to order, and the same order considered, and made the following report:

It appears from the evidence before your committee that there were two officers in the Virginia line of the same grade and of the same name, belonging one to the 11th and one to the 15th regiments. The Captain Jones was belonged to the 15th regiment was discharged from the service in 1778. The other continued in active service till 1779; at which time several companies broken by the events of war, were united to make full companies; so which arrangement the same not Jones under consideration was left without a command and became a supernumerary; and, from the testimony of John Justice Marshall and that of others, your committee believe he so retained till the end of the war. The committee report a bill.